



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Order Before the Public Utilities Commission of the State of California Instituting Rulemaking On the Commission's Own Motion into the Statewide Expansion of Public Policy Pay Telephones

MEETING DATE: June 17, 1998

PREPARED BY: City Clerk

RECOMMENDED ACTION: Information only, no action required.

BACKGROUND INFORMATION: The City Clerk's Office has received an Order before the Public Utilities Commission of the State of California instituting rulemaking on the commission's own motion into the Statewide expansion of public policy pay telephones (Exhibit A). This is information only, no Council action is required.

FUNDING: None


Alice M. Reimche
City Clerk

APPROVED: _____

H. Dixon Flynn -- City Manager

MAILED 5/26/98

EXHIBIT A

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's own motion into the statewide
expansion of public policy pay telephones.

FILED
PUBLIC UTILITIES COMMISSION
May 21, 1998
SAN FRANCISCO OFFICE
R.98-05-031

ORDER INSTITUTING RULEMAKING**Summary**

By this order, we open a rulemaking proceeding to assess the adequacy of our public policy pay telephone program (payphone program or program), and the need to expand the program statewide, change the payphone enforcement program, and establish funding of the programs on a fair and equitable basis. Public policy payphones are payphones made available to the general public in the interest of public health, safety, and welfare at locations where there would otherwise not be a payphone.

Background

The Federal Communications Commission (FCC) deregulated payphones effective April 15, 1997, to promote competition among Payphone Service Providers and to encourage widespread deployment of payphone services to the benefit of the general public, as required by Section 276 of the Telecommunications Act of 1996 (Act). The terms and conditions of this deregulation action are set forth in the FCC's final rules in its investigation into Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (FCC Docket No.96-128 as adopted and released

on September 20, 1996, and published in the October 7, 1996 Federal Register Volume 61, No.61, pages 52307 through 52325).

Public Policy Payphones

The FCC, consistent with Section 276(b)(2) of the Act, considered whether public policy payphones should be maintained and, if so, how to ensure that such payphones are supported fairly and equitably. The FCC concluded that there is a need to ensure the maintenance of public policy payphones in locations where, as a result of competition and the elimination of subsidies which helped to support such payphones in the past, there might not otherwise be a payphone. Although the FCC adopted specific guidelines to ensure that these payphones are funded fairly and equitably, it left the primary responsibility for administering and funding such payphones to the individual states.

We have discretion with respect to funding a statewide public policy payphone program, so long as the funding mechanism fairly and equitably distributes the cost of such a program, and does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the Act. State programs supporting public policy payphones are also subject to Section 253(b) of the Act which requires that such a program be implemented on a competitively neutral basis.

The FCC, in furtherance of its statutory responsibility under Section 276(b)(2) of the Act, requires each state to review whether the state has adequately provided for public policy payphones in a manner consistent with FCC Docket No.96-128. It also requires each state to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions, pursuant to Section 276 of the Act. The FCC requires this review and evaluation of public policy payphones to be completed by November 8, 1998.

Although California does not currently have a statewide public policy payphone program, a public policy payphone program has been in place for Pacific Bell's and GTE California Incorporated's (GTEC) service territories since 1990, pursuant to Decision (D.) 90-06-018 (36 CPUC2d 446 (1990)) issued in Investigation 88-04-029, an investigation into the regulation of payphones.

Given our desire to encourage as many parties as possible to participate in the restructuring of California's public policy payphone program, and in consideration of the FCC's November 8, 1998 date for completion of our program review, the Commission's Telecommunications Division held and completed a public meeting to review and address the FCC's public interest payphone guidelines set forth in Docket No.96-128 for the purpose of recommending to the Commission revised procedures for the deployment and funding of a California statewide public policy payphone program. This public meeting was held on November 12, 1997. All local exchange carriers (LECs), competitive local exchange carriers (CLCs), payphone service providers (PSPs), as well as a number of consumer organizations were invited to attend the public workshop. Participants from all groups were represented at the public meeting.

The Telecommunications Division has reviewed and considered the existing payphone program and discussions which took place at the public meeting to identify program changes to be considered in this rulemaking. Any expansion of a public policy payphone program impacts the payphone enforcement program. Hence, changes to the payphone enforcement program, identified in Appendix A, also need to be considered. Appendix A to this rulemaking identifies the existing program criteria and the Telecommunications Division suggested changes for the public policy payphone and payphone enforcement programs. All respondents and interested parties are invited to comment on the current program and suggested changes within 60 days after the

issuance of this rulemaking. Replies, if any, to the comments should be filed within ten days after the date comments are filed with the Docket Office.

Any change to the program directly impacts the public. Hence, the public should be given an opportunity to comment on the current program and suggested changes. Accordingly, the Telecommunications Division will hold public participation workshops to obtain comments from the public on the current program and issues being considered in this rulemaking. The workshops, selected to ensure representation of both urban and rural communities, will be held in Fresno, Huntington Beach, San Francisco, and Redding as specified in Appendix A. In addition, the Telecommunications Division should have in attendance at each location a representative who can explain the current public policy payphone program and suggested changes.

The Telecommunications Division should submit a compliance filing with the Docket Office summarizing the results of its public participation workshops no later than July 20, 1998. A copy of the compliance filing should be served on the service list for this proceeding, including those identified as "State Service." Responses, if any, to the workshop report should be filed with the Docket Office within ten days after the workshop report is filed. A copy of the response should be served on the parties listed on the service list for this proceeding, and those listed as "State Service."

Respondent Parties

Any assessment of our public policy payphone program requires the cooperation of all LECs and CLCs. Hence, the LECs and CLCs should be named respondents to this rulemaking.

SB 960 (Ch.96-0856) Preliminary Scoping Memo

The rules and procedures implementing many of the reforms contained in Senate Bill (SB) 960 are found in Article 2.5 of our Rules of Practice and Procedure

(Rules), which are posted on the Commission's web site (<http://www.cpuc.ca.gov>). Pursuant to Rule 4(a), the rules in Article 2.5 shall apply to this proceeding.

Pursuant to Rule 6(C)(2), we preliminarily determine the categorization of this rulemaking proceeding to be "quasi-legislative," as that term is defined in Rule 5(d) to include proceedings that establish policy or rules affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.

Consistent with the quasi-legislative category of this proceeding, we anticipate that there may be full panel hearings where we will receive information on legislative facts (that is, general facts that help us decide questions of law and policy and discretion (Rule 8(f)(3))). At this time, we do not see a need for hearings for the presentation of adjudicative facts (which answer questions such as who did what, where, when, how, why, or with what motive of intent (Rule 8(f)(1))). We intend to resolve this proceeding by the FCC's November 8, 1998 completion date, as detailed in the proposed timetable in Appendix B. However, in no event will this rulemaking proceeding remain open for more than 18 months. Commissioner Bilas and Administrative Law Judge (ALJ) Galvin are assigned to this proceeding.

As required in Rule 6(C)(2), any person filing a response to this rulemaking shall state in that response any objections to the order regarding the category, need for evidentiary hearings, need for an opportunity to make an oral argument, preliminary scope, and timetable as set forth in Appendix B to this rulemaking. Any such response should be filed within ten days after the effective date of this rulemaking.

If any person believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding, they must file a motion as part of their response to the rulemaking. The motion must request an evidentiary hearing and justify the need for an evidentiary hearing by identifying the material disputed factual issues on which a hearing should be held. In addition, the motion should identify the general nature of the adjudicative evidence that person proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the presentation of adjudicative facts will be waived if they do not follow the above procedure for a timely request.

Commissioner Bilas will issue a final scoping memo within ten days after the filing of responses to this rulemaking. Rule 6.4 provides for appeal of categorization, which may only occur after the Assigned Commissioner issues a ruling, pursuant to Rule 6(C)(2), on category, the need for hearings, and the scoping memo.

Any persons interested in participating in this rulemaking who are unfamiliar with Commission procedures, should contact the Commission's Public Advisor Office at either (415) 703-2074 or (213) 897-3544.

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's own motion to assess the adequacy of our public policy payphone program, and the need to expand the program statewide, change the payphone enforcement program, and establish funding of the programs on a fair and equitable basis. The rulemaking will consider public policy reforms instituted by the Federal Communications Commission. The focus of this rulemaking, shall be on the current payphone criteria and suggested changes set forth in Appendix A to this rulemaking.

2. Any person or representative of an entity interested in participating in the rulemaking as a party must send a letter to the Commission's Process Office identifying the extent of their participation and party status within ten days from the date of this order. Any person or representatives of an entity not seeking party status but interested in being placed on the "Information Only" portion of the service list must send a letter to the Commission's Process Office within ten days from the date of this order. A service list shall be created and distributed within 20 days from the date of this order.

3. Pursuant to Rule 6 (C)(2) of the Commission's Rules of Practice and Procedure, we preliminary determine the categorization of this rulemaking proceeding to be "quasi-legislative," as that term is defined in Rule 5(d). Consistent with the quasi-legislative categorization of this proceeding there may be hearings at which we anticipate receiving information on legislative facts. At this time, we do not see a need for hearings for the presentation of adjudicative facts.

4. All local exchange telephone companies (LECs) and competitive local carriers (CLCs) are named respondents to this rulemaking.

5. Respondents and interested parties may file and serve comments on the current payphone criteria and suggested changes to the payphone policy attached as Appendix A to this rulemaking with the Docket Office within 60 days from the date of this order. Replies, if any, to the comments shall be filed and served within ten days after the date comments are filed with the Docket Office.

6. Any party or interested person may file a response to this rulemaking within ten days after the effective date of this order. As required in Rule 6(C)(2), any party filing a response shall state in that response any objections to the order regarding category, need for hearing, and preliminary scoping memo, including the description of issues and the timetable for resolving this proceeding.

7. If any party to this proceeding believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding that party must file a motion as part of its response to the rulemaking set forth in Ordering Paragraph 6 of this rulemaking. Any right a party may otherwise have to an evidentiary hearing for the presentation of adjudicative facts will be waived if the party does not follow this procedure for a timely request.

8. The Telecommunications Division shall hold public participation workshops in Fresno, Huntington Beach, San Francisco, and Redding on the specific dates and locations detailed in Appendix A to this rulemaking.

9. The Telecommunications Division shall submit a compliance filing with the Docket Office summarizing the results of its public participation workshops no later than July 20, 1998. A copy of this compliance filing shall be served on the parties listed on the service list for this proceeding and on those listed as "State Service." Replies, if any, to the compliance filing shall be filed with the Docket Office no later than ten days after the compliance filing is filed with the Docket Office. Copies of any replies shall also be served on the parties of record and "State Service."

10. In no event shall this rulemaking proceeding remain open for more than 18 months.

11. The Executive Director shall cause a copy of this rulemaking to be served upon respondent LECs and CLCs, the service list of Investigation 88-04-029, and on all cities and counties within California.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

APPENDIX A

PUBLIC POLICY PAYPHONES

I. GUIDELINES

The existing criteria for placement of Public Policy Payphones (PPP) in PacBell and GTEC service areas consists of the following:

- An entity (including but not limited to a city or county government, airport authority or shopping center) is not permitted a (PPP) if it has a contract for compensation from a Payphone Service Provider (PSP)
- No other payphones may be located at the same address
- The station agent upon whose property the PPP is located agrees to no compensation
- The public must be granted unrestricted access to the PPP
- The station agent agrees to post signs outside and inside directing public to PPP
- One of the following conditions must be met:
 - location must be designated as an emergency aid gathering place OR
 - phone is located where residents cannot individually subscribe because of unavailability of facilities for access OR
 - there is no other payphone within 50 yards of the PPP

The Telecommunications Division (TD) suggests adding the following criteria for the statewide program:

- Necessity based on public service, health and safety
- In determining profitability, all revenue sources should be considered, i.e., interconnection fee arrangements and call termination
- Seasonal businesses may be considered, but revenue must be annualized to determine profitability
- Private clubs should be excluded even if placement allows public access

II. FUNDING

The current program is funded through a portion of the surcharge on pay telephone lines in PacBell and GTEC service territories only.

TD Recommends that funding for the state-wide program be achieved through a portion of the Universal Lifeline Telephone Service surcharge. Using the surcharge will result in all customers contributing to PPP funding. To ensure a smooth transition, TD recommends that the current funding level remain in effect until 12/31/98 with the new funding beginning on 1/1/99, or as otherwise determined by the Commission.

APPENDIX A

Public Policy Payphones

III. ADMINISTRATION

The current program provides for review of applications by a panel comprised of PacBell, GTEC and the Office of Ratepayer Advocates (ORA).

TD Recommends establishing a committee with a representative from the Public Utilities Commission staff from the Consumer Services Division, the ORA, and a representative from the Department of Consumer Affairs. The Committee will generate Requests for Proposals for installation of PPPs, using state procurement guidelines. The Committee or a state agency will collect Surcharge funds and disburse for expenses after approval by the Program Manager in the Telecommunication Division's Public Programs Branch,.

TD recommends that the Payphone Service Provider Enforcement Program (PSPEP) be expanded to a state-wide basis along with the new PPP program, and that the funding for the enforcement program will be an equal surcharge on all pay telephone lines instead of the different surcharge levels currently used

TD recommends that the surcharge for the PSPEF be eliminated until the surplus funds of approximately \$2 million are used.

IV. PLACEMENT

The existing program provides for placement of Public Policy Payphones by PacBell and GTEC only.

TD Recommends bidding by counties to equalize the opportunity for all Payphone Service Providers. Bidding must follow state procurement rules awarding contract to lowest bidder although other factors may be considered. If some counties receive no bids to provide service, the Committee may negotiate with any PSP for service. Contracts for providing PPPs should be for 3 to 5 years to allow for cost recovery. Existing PacBell and GTEC contracts will be honored, but upon expiration, the new program will apply. For bidding purposes, PacBell and GTEC must supply information regarding the number and location, by county, of existing PPP contracts and their expiration dates.

APPENDIX A

PUBLIC POLICY PAYPHONES

PUBLIC MEETING SCHEDULE

Redding

Monday, June 22, 1998

7 to 9 PM

Redding Senior Center

2290 Benton Dr.

Redding, CA 96003

San Francisco

Tuesday, June 23, 1998

7 to 9 PM

California Public Utilities Commission, Hearing Room A

505 Van Ness Ave.

San Francisco, CA 94102

Huntington Beach

Thursday, June 25, 1998

7 to 9 PM

City Council Chambers

2000 Main Street

Huntington Beach, CA 92648

Fresno

Monday, June 29, 1998

7 to 9 PM

Fresno City Hall, City Council Chambers

2600 Fresno Street

Fresno, CA 93721

(End of Appendix A)

APPENDIX B
PUBLIC POLICY PAYPHONE PROGRAM

Proposed Timetable

<u>DATE</u>	<u>ACTIVITY</u>
May 21, 1998	Commission issues Rulemaking Proceeding.
June 1, 1998	Notice of participation and party status.
June 1, 1998	Responses to Rulemaking regarding category, need for evidentiary hearings, need for oral argument, and preliminary scope and timetable.
June 10, 1998	Service list distributed.
June 11, 1998	Assigned Commissioner's scoping memo.
June 22, 1998	Appeals, if any, to categorization.
June 26, 1998	Responses, if any, to appeals of categorization.
July 20, 1998	Comments on the payphone program criteria and suggested changes. Compliance filing on results of public participation workshops.
July 30, 1998	Replies to public participation workshop compliance filing, if any. Replies, if any, to comments; proposed submittal date.

R.98-05-031 ALJ/MFG/mrj

September 11, 1998	Draft decision issued for comment.
October 1, 1998	Comments filed on draft decision.
October 6, 1998	Reply to comments filed on draft decision.
November 5, 1998	Commission Order.

(End of Appendix B)